(8)

No. 98-387

IN THE

Supreme Court of the United States

OCTOBER TERM, 1998

GREATER NEW ORLEANS BROADCASTING ASSOCIATION, INC., individually and on behalf of its members; PHASE II BROADCASTING, INC.; RADIO VANDERBILT, INC.; KEYMARKET OF NEW ORLEANS, INC.; PROFESSIONAL BROADCASTING, INC.; WGNO, INC.; BURNHAM BROADCASTING COMPANY, A Limited Partnership,

Petitioners,

v.

UNITED STATES OF AMERICA and FEDERAL COMMUNICATIONS COMMISSION,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Fifth Circuit

BRIEF OF AMICUS CURIAE ASSOCIATION OF NATIONAL ADVERTISERS, INC. IN SUPPORT OF PETITIONERS

Of Counsel
GILBERT H. WEIL
60 East 42nd Street
New York, NY 10168
(212) 687-8573

JOHN J. WALSH*
STEVEN G. BRODY
CADWALADER, WICKERSHAM & TAFT
100 Maiden Lane
New York, NY 10038
(212) 504-6000

Counsel for Amicus Curiae

**Counsel of Record*

COCKLE LAW BRIEF PRINTING CO., (800) 225-6964
OR CALL COLLECT (402) 342-2831

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STATEMENT OF INTEREST[1]

The Association of National Advertisers, Inc. ("ANA"), the advertising industry's oldest trade association, is the only organization exclusively dedicated to enhancing the ability of businesses to advertise on a national and regional basis. With more than 7,500 subsidiaries, divisions and operating units, ANA's members market a wide array of goods and services, and account for a significant percentage of the nation's annual national and regional advertising expenditures. As the nation's principal community of commercial speakers, ANA has long been committed to strong First Amendment protection for truthful, nonmisleading commercial speech. That commitment has been demonstrated by ANA's frequent appearance as an amicus curiae in commercial speech cases before this Court and the federal circuit courts.

This case is of particular importance to ANA's members because it presents an opportunity to clarify the standard of judicial review for governmental restrictions on truthful, nonmisleading commercial speech. At the same time that some Justices of this Court are expressing the view that a form of strict scrutiny should apply to such restrictions, certain lower courts, including the court of appeals here, are applying a retrograde test that more closely approximates rational basis scrutiny. Until this

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[1] No counsel for any party authored this brief in whole or in part, and no person or entity, other than the amicus curiae, its members, or its counsel, made a monetary contribution to the preparation or submission of the brief. The written consent of the parties to the filing of this brief has been filed with the Clerk of Court.

confusion is eliminated, ANA's members will not receive adequate and consistent First Amendment protection for their advertising.

Moreover, ANA believes that the right way to eliminate the confusion in the lower courts is by this Court's explicit adoption of strict scrutiny as the test for reviewing content-based restrictions on truthful, nonmisleading commercial speech. In addition to the legal arguments made in this brief, ANA urges the Court to consider another reason for the adoption of strict scrutiny – the dignity interest of the millions of Americans who earn their living through commerce. Protection of this interest is a fundamental reason why we have a Bill of Rights. Commerce is a dignified human endeavor, no less than the pursuit of art, science or politics. ANA's members and their employees are rightly proud of the products and services they offer to the public, and the contribution they make to the prosperity of our nation. Government should not be allowed to prevent them from speaking truthfully through advertising about the activities which sustain their livelihood, unless government can satisfy the exacting requirements of strict scrutiny.

SUMMARY OF ARGUMENT

More than two decades ago, this Court recognized the great constitutional value of truthful, nonmisleading commercial speech in *Virginia State Board of Pharmacy v. Virginia Citizens Consumer Council, Inc.*, 425 U.S. 748 (1976). Since then, the Court has been clarifying the substantial burden of proof that a government must satisfy if

it chooses to restrict commercial speech. The Court's efforts have focused on the balancing test adopted in *Central Hudson Gas & Electric Corp. v. Public Service Commission of New York*, 447 U.S. 557 (1980) – a test that, as some Justices have observed, was inadequate from the beginning because it assumed that truthful, nonmisleading commercial speech should receive less than full First Amendment protection. Perhaps in reaction, the Court has refined and enhanced that test, in the evident faith that it could grow to provide adequate and consistent protection for commercial speech rights. Indeed, as discussed in this Court's more recent decisions, the *Central Hudson* test has become nearly equivalent to strict scrutiny.

Unfortunately, some lower courts have ignored this Court's more recent decisions, choosing instead to adhere to its earlier, implicitly superseded decisions, or their own mistaken notions about the "lesser" value of commercial speech. The Court now has before it yet another case where government has attempted to keep the American people ignorant for their own purported good, and a court of appeals, claiming to apply *Central Hudson*, has upheld such censorship as permissible under the First Amendment. This deeply flawed ruling reinforces the view of several Justices of this Court – an apparent majority – that *Central Hudson* is not up to the task of ensuring consistent First Amendment protection for commercial speech rights.

The *Central Hudson* test should be replaced explicitly by a test that applies strict scrutiny to content-based restrictions on truthful, nonmisleading commercial

speech. The dangers associated with content discrimination, which justify full First Amendment protection for noncommercial speech, apply with equal force to commercial speech. Against the backdrop of the arguments the Government can be expected to offer in its effort to defend the indefensible positions taken by the court below, this Court will have an opportunity to review and renounce the rationale for "limited" protection – the notion that commercial speech deserves reduced constitutional protection because of its supposed "verifiability" and "hardiness." Further, the original intent behind the First Amendment supports adoption of strict scrutiny, because eighteenth century Americans undoubtedly would have rejected the suggestion that the First Amendment to the Constitution they adopted distinguishes between what we latter-day Americans have chosen to classify as commercial and noncommercial speech.

The time has come for the Court to complete the journey that it started with *Virginia State Board* in 1976. In its cases preceding this one, the Court has moved ever closer to adopting strict scrutiny protection for commercial speech. We respectfully submit that, in reversing the court of appeals, the Court should announce that full First Amendment protection for truthful, nonmisleading commercial speech has arrived.

ARGUMENT

I. THE LOWER COURTS TOO OFTEN RENDER DECISIONS THAT UNDERVALUE COMMERCIAL SPEECH RIGHTS, DESPITE TWENTY-TWO YEARS OF EFFORTS BY THIS COURT TO DEFINE AND ENHANCE CONSTITUTIONAL PROTECTION FOR THOSE RIGHTS

A. This Court Steadily Has Been Raising the Level of First Amendment Protection for Commercial Speech

During the past twenty-two years, this Court has taken commercial speech law from a point where such speech received no First Amendment protection, to the point today where the Court appears to be on the verge of adopting a standard of strict scrutiny. For several decades, the law of commercial speech could be summed up in one sentence from *Valentine v. Chrestensen*, 316 U.S. 52, 54 (1942): "We are . . . clear that the Constitution imposes no . . . restraint on government as respects purely commercial advertising." That unsupported holding, which Justice Douglas later characterized as "casual, almost offhand," was overruled 34 years later when the Court more carefully considered the value of commercial speech in *Virginia State Board*. *See Cammarano v. United States*, 358 U.S. 498, 514 (1959) (Douglas, J., concurring).

Before tracing the evolution of the constitutional standard for protecting commercial speech, it is worthwhile to explore the reasons for the Court's recognition in *Virginia State Board* that the First Amendment protects commercial speech. The power of those reasons has driven commercial speech protection ever closer to strict

scrutiny. Not surprisingly, the Court's reasons for protecting commercial speech are virtually identical to its reasons for protecting political and other noncommercial speech:

> There is, of course, an alternative to this highly paternalistic approach [of allowing a government to keep its citizens in ignorance]. That alternative is to assume that this information is not in itself harmful, that people will perceive their own best interests if only they are well enough informed, and that the best means to that end is to open the channels of communication rather than to close them. . . . It is precisely this kind of choice, between the dangers of suppressing information, and the dangers of its misuse if it is freely available, that the First Amendment makes for us.

425 U.S. at 770.

Extending the parallel to noncommercial speech, the Court in *Virginia State Board* explained that First Amendment protection for commercial speech is premised on the rights of both hearers and speakers (such as the members of ANA). From the perspective of hearers, the Court observed that a "particular consumer's interest in the free flow of commercial information . . . may be as keen, if not keener by far, than his interest in the day's most urgent political debate." *Id.* at 763. As to speakers, four Justices recently noted that their interests also were at the heart of *Virginia State Board*: "[w]hat stood against the claim of social unimportance for commercial speech was not only the consumer's interest in receiving information, but the commercial speaker's own economic interest in promoting his wares. '[W]e may assume that the advertiser's

interest is purely an economic one. That hardly disqualifies him from protection under the First Amendment.' " *Glickman v. Wileman Bros. & Elliott, Inc.*, 117 S. Ct. 2130, 2143 (1997) (Souter, J., dissenting, joined by Rehnquist, C.J., Scalia & Thomas, JJ.) (*quoting Virginia State Bd.*, 425 U.S. at 762).

Just as the Court's reasons for protecting commercial speech sound like its reasons for protecting noncommercial speech, so too has its *Central Hudson* test for protecting commercial speech increasingly come to resemble the strict scrutiny test applicable to restrictions on noncommercial speech. Consider the third prong of *Central Hudson*. In 1986, it appeared that the Court had diluted that prong, requiring government only to show that it had a "reasonable belief" that its restriction on speech would directly advance its asserted interest. *Posadas de P.R. Assocs. v. Tourism Co. of P.R.*, 478 U.S. 328, 341-42 (1986). But by 1993, the Court had revived and reinvigorated the third prong, a process that culminated in *Edenfield v. Fane*, 507 U.S. 761, 770-71 (1993). Under the *Edenfield* standard, the Court requires a government to "*demonstrate* that the harms it recites are *real* and that its restriction will *in fact* alleviate them to a *material* degree." *Id.* at 771 (emphasis supplied). This enhanced third prong is essentially indistinguishable from the strict scrutiny test's requirement that government demonstrate a "substantial relationship" between a challenged restriction on fully protected speech and the asserted governmental goal. *See Village of Schaumburg v. Citizens for a Better Environment*, 444 U.S. 620, 638-39 (1980).

This Court similarly strengthened the fourth prong of *Central Hudson* in the 1990's. Again, it had appeared that

Posadas had drained that prong of much of its power, by concluding that it is "up to the legislature" to decide whether or not a less speech-restrictive alternative would be as effective as censorship. 478 U.S. at 344. In 1993, however, the Court revitalized the fourth prong, stating that it is not met if there are "obvious less-burdensome alternatives to the restriction on commercial speech." *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410, 417 n.13 (1993). This clarification of the fourth prong has become an independent ground under which restrictions on commercial speech are invalidated. *See, e.g., 44 Liquormart, Inc. v. Rhode Island*, 517 U.S. 484, 528-29 (1996) (O'Connor, J., concurring); *Rubin v. Coors Brewing Co.*, 514 U.S. 476, 489-91 (1995). As Justice Thomas has commented, the augmentation of the fourth prong brings it very close to the "least restrictive means" test applicable in the context of fully protected speech. *44 Liquormart*, 517 U.S. at 524-25.

In sum, this Court's decisions in the 1990's have elevated First Amendment protection for commercial speech, transforming the third and fourth prongs of *Central Hudson* into requirements that closely approximate strict scrutiny.[2] As discussed below, however, too many lower courts have not learned from this Court's more

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[2] This Court has yet to deal with a key remaining distinction between the *Central Hudson* test and strict scrutiny. Whereas *Central Hudson*'s second prong requires the government to demonstrate a "substantial" interest in restricting commercial speech, strict scrutiny requires a "compelling" interest. As discussed below, there is no basis for imposing a lesser burden on government when it restricts truthful, nonmisleading commercial speech based on content.

recent decisions, and instead apply *Central Hudson* as if it were a balancing test that permits judicial deference to governmental censorship.

B. The *Central Hudson* Test, Even as Enhanced, Does Not Provide Consistent Protection for First Amendment Rights

Regardless of how the *Central Hudson* test has been defined, it inevitably has been difficult to apply in practice. Justice Thomas has described the unpredictable malleability of *Central Hudson* when applied by judges:

> The courts, including this Court, have found the *Central Hudson* "test" to be, as a general matter, very difficult to apply with any uniformity. This may result in part from the inherently nondeterminative nature of a case-by-case balancing "test" unaccompanied by any categorical rules, and the consequent likelihood that individual judicial preferences will govern application of the test.

517 U.S. at 526-27 (footnotes omitted).

But inconsistent results in constitutional litigation violate our fundamental sense of justice. *See* Antonin Scalia, *The Rule of Law as a Law of Rules*, 56 U. Chi. L. Rev. 1175, 1178 (1989). The protection of civil rights must not depend upon a spin of the judicial assignment wheel. *See id.* Justice Scalia has crafted an analogy that illuminates this principle of equal treatment under the law, and which is apropos in a case involving broadcast advertising: "try to let one brother or sister watch television when the others do not, and you will feel the fury of the fundamental sense of justice unleashed." *Id.*

To extend Justice Scalia's analogy about inconsistent treatment, it is plainly unjust that, under current case law, Americans in certain parts of the nation can watch and listen to broadcast advertising for non-Indian casino gaming, while their brethren in other parts of the nation cannot. This unequal treatment of First Amendment rights stems from and is emblematic of the problems with the *Central Hudson* test. Three lower courts, all purporting to apply *Central Hudson*, reached irreconcilable decisions when considering identical First Amendment challenges to section 1304's restrictions on broadcast advertising. *See Greater New Orleans Broadcasting Ass'n v. United States*, 69 F.3d 1296 (5th Cir. 1995), *vacated*, 117 S. Ct. 39 (1996), *on remand*, 149 F.3d 334 (5th Cir. 1998), *cert. granted*, 1999 WL 13527 (Jan. 15, 1999); *Valley Broadcasting Co. v. United States*, 107 F.3d 1328 (9th Cir. 1997), *cert. denied*, 188 S. Ct. 1050 (1998); *Players Int'l, Inc. v. United States*, 988 F. Supp. 497 (D.N.J. 1997), *cert. denied*, 1999 WL 8447 (U.S. Jan. 11, 1999).

In this case, the Fifth Circuit majority found that the Government satisfied the third prong of *Central Hudson* – even though the Government had submitted no evidence to show that its ban on broadcast advertising is effective in achieving its goals – and the fourth prong – even though the Government had submitted no evidence to show why it has not adopted any of the available non-advertising-related means of discouraging casino gaming.

In stark contrast, the Ninth Circuit in *Valley Broadcasting*, considering a record that was virtually identical to the record before the Fifth Circuit, concluded that the Government did not and could not meet the requirements of the third prong. Similarly, the district court in *Players*

International, after closely reviewing the Government's evidence, held that the Government had failed to satisfy both the third and fourth prongs of *Central Hudson*.

Putting aside for the moment the issue of which court reached the correct holding, these conflicting decisions make plain that the *Central Hudson* test is not doing what any constitutional standard must do – promote consistent protection of civil rights. Moreover, these three decisions epitomize a much larger problem in the lower courts.

Today, the *Central Hudson* test means very different things in different courtrooms. Some judges adhere to this Court's more recent rulings, which have made *Central Hudson* akin to a strict scrutiny test. *See, e.g., Bad Frog Brewery, Inc. v. New York State Liquor Auth.*, 134 F.3d 87, 99-101 (2d Cir. 1998); *Nordyke v. Santa Clara Cty.*, 110 F.3d 707, 713 (9th Cir. 1997). Other judges, such as the two in the majority here, rely on this Court's earlier decisions, which seemed to define *Central Hudson* as a test that permitted judicial deference to governmental censors.[3] *See, e.g., Anheuser-Busch, Inc. v. Schmoke*, 63 F.3d 1305 (4th Cir. 1995), *vacated*, 517 U.S. 1206, *on remand*, 101 F.3d 325 (4th Cir. 1996), *cert. denied*, 117 S. Ct. 1569 (1997).

The problem of inconsistent commercial speech decisions is unlikely to be fixed by reiterating or further tinkering with the *Central Hudson* test. This Court has

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[3] Those earlier decisions, although implicitly superseded, have yet to be explicitly overruled by this Court, with one exception. In *44 Liquormart*, the Court started its housecleaning in this area by overruling much of *Posadas*. *See* 517 U.S. at 509-10 (principal opinion); *id.* at 531-32 (O'Connor, J., concurring).

accepted an extraordinary number of commercial speech cases for full review since *Central Hudson* was decided in 1980 – 18 separate cases in approximately 18 years. The time has come to acknowledge that the *Central Hudson* test cannot be salvaged.

A rising chorus of lower courts is calling upon this Court to bring clarity to commercial speech law. In this case, Judge Jones writes for the majority, "the Supreme Court's [commercial speech] jurisprudence has become as complex and difficult to rationalize as the statutory advertising regulations the Court has condemned." *Greater New Orleans Broadcasting Ass'n*, 149 F.3d at 335. The dissenter, Judge Politz, concurs on this one point: "The failure of the Justices to reach an agreement in *44 Liquormart* about the specifics of the parameters of the constitutional review to be applied to commercial speech restrictions deprives the lower courts of the guidance a coherent, dispositive framework would have provided for evaluating these claims." *Id.* at 341.

Similar pleas for clarity are coming out of the Ninth Circuit. In *Nordyke*, a unanimous panel declares, "the *Central Hudson* test is not easy to apply and the [Supreme Court's] cases summarized above might suggest it is sufficiently flexible to accommodate 'good' commercial speech and to suppress that which is 'not so good.' " 110 F.3d at 712. In *Valley Broadcasting*, another Ninth Circuit panel unanimously states, "*44 Liquormart* fails to present a coherent framework for reviewing [commercial speech] claims." 107 F.3d at 1334.

Fortunately, this Court appears ready to respond to these requests for clarity. We respectfully submit that in

the Court's most recent commercial speech decision, *44 Liquormart*, the opinions show that a majority of five Justices now recognizes that the *Central Hudson* test does not sufficiently protect constitutional rights. *See* 517 U.S. at 501 (Stevens, J., joined by Kennedy & Ginsburg, JJ.); *id.* at 517-18 (Scalia, J., concurring) (expressing his "discomfort with the *Central Hudson* test," and that he is not "disposed to reinforce" it); *id.* at 528 (Thomas, J., concurring).[4] Moreover, the four other Justices in *44 Liquormart*, while still relying on *Central Hudson*, acknowledge that an issue has emerged as to "whether the test we have employed since *Central Hudson* should be displaced." *Id.* at 532 (O'Connor, J., concurring). As discussed below, adoption of strict scrutiny would not only eliminate the inconsistent results and other failings of the *Central Hudson* test, but also would provide commercial speakers and their audiences with the constitutional protection they deserve.

II. THIS COURT SHOULD ADOPT STRICT SCRUTINY AS THE APPROPRIATE STANDARD FOR JUDICIAL REVIEW OF CONTENT-BASED RESTRICTIONS ON TRUTHFUL, NONMISLEADING COMMERCIAL SPEECH

A. Content Discrimination Is Equally Unacceptable for Commercial and Noncommercial Speech

The unacceptability of content control by government, which justifies strict scrutiny in the context of

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[4] *See also Rubin*, 514 U.S. at 493 (Stevens, J., concurring) (discussing the "misguided approach adopted in *Central Hudson*").

noncommercial speech, applies with equal force in the context of commercial speech. The First Amendment serves a fundamental national interest by treating content-based restrictions on speech as anathema:

> To permit the continued building of our politics and culture, and to assure self-fulfillment for each individual, our people are guaranteed the right to express any thought, free from government censorship. The essence of this forbidden censorship is content control. Any restriction on expressive activity because of its content would completely undercut the "profound national commitment to the principle that debate on public issues should be uninhibited, robust, a d wide-open."

Police Dep't of Chicago v. Mosley, 408 U.S. 92, 95-96 (1972) (citation omitted). When government discriminates on the basis of content, the dangers are a majoritarian suppression of disfavored or less popular ideas and a resulting distortion of the national debate through which, the First Amendment assumes, the best ideas (including the best products and services) will prevail. *See Virginia State Bd.*, 425 U.S. at 770.

In the commercial speech area, content discrimination not only hinders discussion about the relative merits of various products and services, but also about whether and to what extent the underlying economic activities should be regulated. *44 Liquormart*, 517 U.S. at 503 (principal opinion). For example, the nation is currently debating the impact of increased gambling and possible regulatory responses. Indeed, a National Gambling Impact Study Commission has been impaneled and is scheduled to issue its report this June. *National Gambling*

Impact Study Comm'n, Pub. L. 104-169, 110 Stat. 1482 (1996), *as amended by* Pub. L. 105-30, § 1, 111 Stat. 248 (1997). Particularly at this time, the Government should not be allowed to enforce section 1304, which restricts the flow of information that otherwise would both stimulate and inform this important national debate. *See id.*; *Virginia State Bd.*, 425 U.S. at 780 & n.8 (Stewart, J., concurring).

The courts should be equally vigilant with respect to content discrimination in the noncommercial and commercial speech contexts, for commercial speakers frequently communicate with the public about new ideas that are at least as important as many of the ideas contained in noncommercial speech.[5] *See Virginia State Bd.*, 425 U.S. at 763. For example, advertising for computers and related products tells the American public about ways to receive unprecedented access to information and how to form electronic communities; advertising for digital cameras informs families of new ways to preserve their memories of important events; and advertising for automobiles communicates innovations that reduce the risk of injury from accidents. These messages cannot be less worthy of protection than the expletive about the

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[5] This Court's antipathy toward content discrimination in the commercial speech context is reflected in its "general rule" that "the speaker and the audience, not the government, assess the value of the information presented." *Edenfield*, 507 U.S. at 767. Moreover, the Court has recognized that the protected content of advertising includes not only explicitly factual material, but also images designed solely to "attract[ ] the attention of the audience to the advertiser's message." *Zauderer v. Office of Disciplinary Counsel*, 471 U.S. 626, 647 (1985).

draft emblazoned on Leonard Cohen's jacket, or the rantings of neo-Nazis. *See Cohen v. California*, 403 U.S. 15 (1971); *National Socialist Party v. Village of Skokie*, 432 U.S. 43 (1977).

Indeed, this Court previously has recognized that content discrimination is no less pernicious simply because the restricted speech falls into a category that traditionally has not received full First Amendment protection. In *R.A.V. v. City of St. Paul, Minnesota*, 505 U.S. 377 (1992), the Court held that strict scrutiny must apply when a government restricts the content of speech for reasons other than those that make a particular category of speech proscribable, rather than fully protected. *Id.* at 387-88. The Court applied strict scrutiny in *R.A.V.* because defendant City of St. Paul had restricted "fighting words" not because of the likelihood of a violent response, but in order to impose special prohibitions on "those speakers who express[ed] views on disfavored subjects." *Id.* at 391. More to the point, the Court added that this same First Amendment principle would mean that strict scrutiny should apply whenever a government restricts the content of commercial speech for reasons other than those that justify depriving it of full First Amendment protection, such as the risk of fraud. *Id.* at 388-89 (citations omitted).[6]

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[6] Several lower courts, relying on *R.A.V.*, have either applied or considered the application of strict scrutiny to content-based restrictions on commercial speech. *See MD II Entertainment, Inc. v. City of Dallas*, 28 F.3d 492, 495 (5th Cir. 1994) (recognizing potential application of *R.A.V.* in commercial speech context); *Hornell Brewing Co. v. Brady*, 819 F. Supp. 1227, 1232-33 (E.D.N.Y. 1993) (applying both *Central Hudson* and

R.A.V. was invoked in spirit if not in name when Justice Stevens, writing in *44 Liquormart* and joined by Justices Kennedy and Ginsburg, endorsed application of strict scrutiny to content-based restrictions on commercial speech: "when a State entirely prohibits the dissemination of truthful, nonmisleading commercial messages for reasons unrelated to the preservation of a fair bargaining process [*i.e.*, prevention of overreaching or deception], there is far less reason to depart from the rigorous review that the First Amendment generally demands." 517 U.S. at 501.[7]

As the foregoing discussion demonstrates, the dangers of content discrimination require that strict scrutiny

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R.A.V. without deciding which is required); *Citizens United For Free Speech II v. Long Beach Township Bd. of Comm'rs*, 802 F. Supp. 1223, 1232 (D.N.J. 1992) ("It is clear from the Supreme Court's recent decision in [*R.A.V.*], that commercial speech must be protected by the usual strictures against content-based distinctions.").

[7] Certain courts, including the court of appeals here, have tried to diminish the endorsement of strict scrutiny by Justices Stevens, Kennedy and Ginsburg by claiming that it only applies to blanket bans on commercial speech. Justice Stevens' opinion does note the particular danger of complete speech bans, but never suggests that a less than complete ban should be excused from the rigors of strict scrutiny. Indeed, Justice Stevens cited the unanimous decision in *Linmark Associates, Inc. v. Township of Willingboro*, 431 U.S. 85 (1977), a decision where the Court rejected the argument that a content-based ban on "For Sale" signs should receive less First Amendment scrutiny because it affected only one mode of communication. *Id.* at 93-94; *see Elrod v. Burns*, 427 U.S. 347, 373 (1976) ("The loss of First Amendment freedoms, for even minimal periods of time, unquestionably constitutes irreparable injury.").

be applied to restrictions on truthful, nonmisleading commercial speech. Nonetheless, advocates of censorship insist that strict scrutiny should be reserved only for noncommercial speech. Typically, they premise their argument on two supposed distinctions between commercial and noncommercial speech – the greater "verifiability" and "hardiness" of commercial speech.

The possibility that these distinctions might exist, and that they might justify less protection for commercial speech, was initially suggested by Justice Blackmun in a footnote in *Virginia State Board*, 425 U.S. at 771 n.24. In fact, it was the positing of these so-called "commonsense distinctions" that convinced this Court to create the *Central Hudson* test and provide less than full First Amendment protection to commercial speech. *See Central Hudson*, 447 U.S. at 562-63.

We respectfully submit that, regardless of what "common sense" once seemed to suggest, these distinctions can no longer, under careful consideration, support a regime of lesser protection for commercial speech. As Justice Stevens, joined by Justices Kennedy and Ginsburg, states in *44 Liquormart*, "neither the 'greater objectivity' nor the 'greater hardiness' of truthful, nonmisleading commercial speech justifies reviewing its complete suppression with added deference." 517 U.S. at 502. The same conclusion was reached by Justice Thomas. *Id.* at 523 n.4. Even Justice Blackmun, who first posed these so-called "commonsense differences," later explained that they do not "justify relaxed scrutiny of restraints that suppress truthful, nondeceptive, noncoercive commercial speech." *Central Hudson*, 447 U.S. at 578.

A leading article on this subject has examined the "hardiness" and "verifiability" arguments, concluding "that the commercial/noncommercial distinction makes no sense." Alex Kozinski & Stuart Banner, *Who's Afraid of Commercial Speech?*, 76 Va. L. Rev. 627, 628 (1990). When first describing the "hardiness" distinction, Justice Blackmun suggested that "[s]ince advertising is the [s]ine qua non of commercial profits, there is little likelihood of its being chilled by proper regulation and forgone entirely." *Virginia State Bd.*, 425 U.S. at 771 n.24. Kozinski and Banner, however, point out that much noncommercial speech is engaged in for profit but nonetheless receives full First Amendment protection, such as newspaper publishing and news broadcasting. Moreover, the profit motive does not necessarily make commercial speech any hardier than fully protected speech. Other motivations for speaking can be just as strong as economics, such as religious feeling, political enthusiasm, or artistic impulses. 76 Va. L. Rev. at 637.

The "verifiability" distinction fares no better under Kozinski and Banner's examination. They observe that many varieties of noncommercial speech, such as scientific speech, are at least as objective as commercial speech, and yet receive full First Amendment protection. *Id.* at 635. Moreover, the supposed greater verifiability of commercial speech cannot justify reduced constitutional protection when government seeks, as it does here, to censor for reasons having nothing to do with the truth or falsity of commercial speech, or its potential to mislead.

Id.; *see 44 Liquormart*, 517 U.S. at 501 (Stevens, J.); *R.A.V.*, 505 U.S. at 387-88.[8]

In short, the evils of content discrimination, as recognized by this Court in *R.A.V.* and other precedents throughout decades of First Amendment analysis, require that truthful, nonmisleading commercial speech be accorded the same full First Amendment protection as noncommercial speech.

B. The Historical Circumstances Surrounding the Adoption of the Bill of Rights Confirm that Commercial Speech Merits Full First Amendment Protection

The historical evidence of original intent also supports equal First Amendment treatment of commercial and noncommercial speech.[9] As Justice Scalia has explained, a proper search for original intent "requires

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[8] ANA is not asking this Court to go beyond the holding in *R.A.V.* by extending strict scrutiny protection to commercial speech that is either false or misleading. False advertising harms ANA's members as much as it harms consumers. In any event, there is no dispute that the advertising banned by section 1304 is entirely truthful. Consequently, the "very different constitutional questions" raised by false or misleading speech should be left "for another day." *Linmark Assocs.*, 431 U.S. at 98. (ANA also is not asking this Court to extend First Amendment protection to advertising for unlawful products or services.)

[9] This brief does not repeat the historical evidence already submitted to the Court in *44 Liquormart*, and regarded by certain Justices as supportive of full First Amendment protection for commercial speech. 517 U.S. at 517 (Scalia, J., concurring); *id.* at 522 (Thomas, J., concurring).

immersing oneself in the political and intellectual atmosphere of the time – somehow placing out of mind knowledge that we have which an earlier age did not, and putting on beliefs, attitudes, philosophies, prejudices and loyalties that are not those of our day." Antonin Scalia, *Originalism: The Lesser Evil*, 57 U. Cin. L. Rev. 849, 856-57 (1989).

During the period leading up to the Constitutional Convention, Americans were deeply concerned about the relationship between government and commerce. The Articles of Confederation had not sufficiently advanced, and at times actively hindered, commerce between the States. *See* Max Farrand, *The Framing of the Constitution of the United States* 7 (1913). As explained by the historian Robert Middlekauff,

> [B]y 1786 a feeling of crisis pervaded Congress and much of the nation. At the center of this feeling lay a disenchantment with public finance and commercial policy which in turn bred doubts about the adequacy of republican institutions of government.

Robert Middlekauff, *The Glorious Cause: The American Revolution, 1763-1789* 591 (1982).[10] This commercial crisis in

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[10] Indeed, commercial concerns were the impetus for the Annapolis Conference, the immediate precursor to the Constitutional Convention. Christopher Collier & James Lincoln Collier, *Decision in Philadelphia: The Constitutional Convention of 1787* 42-43 (1986). During September 1786, Commissioners from five states gathered in Annapolis to discuss trade. The Commissioners had been authorized by their respective States "to meet such Commissioners as were, or might be, appointed by the other States in the Union, at such time and place, as

the young nation was a fundamental reason for the convening of the Constitutional Convention in 1787. *See* Farrand, *supra*, at 11.

The Federalist papers, which were published following the adjournment of the Constitutional Convention, could not have been more clear about the centrality of commercial concerns to the Framers. As Alexander Hamilton wrote in No. 12, "The prosperity of commerce is now perceived and acknowledged by all enlightened statesmen to be the most useful as well as the most productive source of national wealth, and has accordingly become a primary object of their political cares." *The Federalist No. 12*, at 91 (Alexander Hamilton) (Clinton Rossiter ed., 1961). In order to remedy the commercial crisis that had arisen under the Articles of Confederation, the drafters of the Constitution provided for a strong central government that would have the express power to regulate interstate commerce. *See* Catherine Drinker Bowen, *Miracle at Philadelphia: The Story of the Constitutional Convention May to September 1787* 9-10 (1966).

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should be agreed upon by the said Commissioners to take into consideration the trade and Commerce of the United States, to consider how far an uniform system in the commercial intercourse and regulations might be necessary to their common interest and permanent harmony, and to report to their several States, such an Act, relative to this great object, as when unanimously ratified by them would enable the United States in Congress assembled effectually to provide for the same." *Proceedings of the State Commissioners at Annapolis, Maryland, September 11-14, 1786, in The Origins of the American Constitution: A Documentary History* 20 (Michael Kammen ed., 1986).

Of course, the creation of a strong central government also worried many Americans. They feared that the new federal government would trample upon their rights. To allay those fears, the Bill of Rights was drafted and ratified by the States. *The Reader's Companion to American History* 97-99 (Eric Foner & John A. Garraty eds., 1991); Herbert J. Storing, *What the Anti-Federalists Were For* 64-70 (Murray Dry ed., 1981). First among the amendments to the Constitution was the unequivocal provision that "Congress shall make no law . . . abridging the freedom of speech, or of the press . . . ." U.S. Const. amend. I.

The issue now before this Court is whether the American people of that era, if asked, would have understood the First Amendment as protecting advertising equally with political, religious or literary expression. Because a desire for prosperity based on commerce was a prime force leading to the creation of the Constitution, it must be presumed that the Americans of that day did have that understanding. That presumption is buttressed by considering perhaps the best historical evidence of how contemporary Americans would have perceived advertising – the newspapers of the day.

Attached as appendices hereto are pages from newspapers published during the years leading up to the Bill of Rights in three of the nation's largest cities, Boston, New York and Philadelphia. These pages show that advertising was presented as another "news" item, albeit news about commercial matters, such as a change in the ownership of a tavern or the arrival of a shipment of goods in the "last vessels" from London.

Excerpted from the Philadelphia and Boston newspapers are examples of their front pages, which lead off with banners declaring the right to freedom of speech and press. Directly below those declarations appear columns containing advertisements. The advertisements are largely indistinguishable in appearance from the legal announcements, opinion pieces and political reports that appear on the same page. Indeed, the standard phraseology of the advertisements underscores their informational function: typically, the advertiser states that he "informs his friends and the public in general" of the availability of various products or services for sale.

The excerpt from the New York newspaper is particularly telling, as it is from the edition in which the newly adopted federal Constitution was published. On that same page, in addition to some advertising, appears the following apology:

> *A number of* ADVERTISEMENTS, PIECES, *and* PARAGRAPHS, *are omitted, this week, to give place to the* FEDERAL CONSTITUTION. – *It is presumed, that the cause of these omissions will operate as a sufficient apology to all interested therein.*

Clearly, advertisements were so important at the time that the publisher felt compelled to apologize for their omission, even when it was occasioned by the publication of the most newsworthy document of the century.

The search for original intent often requires a degree of imagination. After piecing together what is known about the time in question, the searcher must imagine how people then living would answer a particular question. At the time of the ratification of the Bill of Rights,

the American people were focused on advancing the free flow of commerce, relied heavily on advertising as a means of communicating about commercial matters, and were interested in placing limits on the powers given to the national government by the new Constitution. It is difficult to conceive that these early Americans, if asked, would have accepted the proposition that their advertising was less worthy of protection under the First Amendment than their speech on other important issues of the day. Indeed, this valuing of commercial speech by eighteenth century Americans lives on in their late twentieth century descendants, whose "interest in the free flow of commercial information . . . may be as keen, if not keener by far, than [their] interest in the day's most urgent political debate." *Virginia State Bd.*, 425 U.S. at 763.

In sum, both the historical evidence of original intent, and this Court's repeated condemnation of content discrimination, compel the adoption of strict scrutiny as the test for protecting truthful, nonmisleading commercial speech from paternalistic censorship. Adoption of strict scrutiny in that context already has been endorsed by four members of this Court – Justices Stevens, Kennedy, Thomas and Ginsburg.[11] *44 Liquormart*, 517 U.S. at 501 (principal opinion); *id.* at 526 (Thomas, J., concurring). Indeed, as discussed above, the *Central Hudson* test, under this Court's more recent decisions, no longer is an

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[11] Strict scrutiny protection for commercial speech is not a new idea in this Court, having been endorsed earlier by Justices Brennan and Blackmun. *Posadas*, 478 U.S. at 351 (Brennan, J., dissenting); *Discovery Network*, 507 U.S. at 438 (Blackmun, J., concurring).

intermediate scrutiny test, but has evolved into a near equivalent of strict scrutiny. The Court should use this case to explicitly place truthful commercial speech where it has always belonged – in the pantheon of speech fully protected by the First Amendment.[12]

III. THE DECISION BELOW SHOULD BE REVERSED UNDER EITHER STRICT SCRUTINY OR A PROPERLY APPLIED *CENTRAL HUDSON* TEST

Section 1304's ban on broadcast advertising for non-Indian casino gaming cannot withstand either strict scrutiny or the corresponding requirements of the enhanced *Central Hudson* test.[13] First, the Government cannot show that it has even a legitimate interest that supports its broadcast ban, let alone the "substantial" interest required by *Central Hudson*, or the "compelling" interest required by strict scrutiny. *See Perry Educ. Ass'n v. Perry Local Educators' Ass'n*, 460 U.S. 37, 45 (1983). The Government's assertion that it has a substantial interest in reducing gambling cannot be squared with its inconsistent, and

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[12] *See* Kathleen M. Sullivan, *Cheap Spirits, Cigarettes, & Free Speech: The Implications of 44 Liquormart*, 1996 Sup. Ct. Rev. 123, 126 (1996) ("After *Liquormart*, it is unclear why 'commercial speech' should continue to be treated as a separate category of speech isolated from general First Amendment principles.").

[13] As a threshold matter, under strict scrutiny, a content-based restriction on speech is presumptively invalid. *R.A.V.*, 505 U.S. at 382. Four Justices of this Court appear to believe that the same presumption of invalidity should apply to content-based restrictions on truthful, nonmisleading commercial speech. *44 Liquormart*, 517 U.S. at 503 (principal opinion); *id.* at 518 (Thomas, J., concurring).

thus irrational, treatment of various forms of gambling. In contrast to its attempt to reduce non-Indian casino gaming, the Government previously has told this Court that it maintains a neutral position with respect to state lotteries, and so permits broadcast advertising for lotteries that originates in states where lotteries are legal. *United States v. Edge Broadcasting Co.*, 509 U.S. 418, 434 (1993). Even more inconsistently, Congress exempted Indian casino gaming from section 1304's broadcast ban, an exemption that completely undercuts the Government's assertion that it has a substantial interest in reducing gambling. Surely, there can be no legitimate distinction between the harms allegedly caused by gambling based on the heritage of the person who owns the roulette wheel.

Second, the Government also cannot satisfy its burden of demonstrating the effectiveness of its speech ban in achieving its asserted goal. This requirement appears both under the strict scrutiny test and the third prong of *Central Hudson*. *See Village of Schaumburg*, 444 U.S. at 638-39. In the trial court, the Government quite deliberately chose not to submit any evidence to demonstrate that advertising in general directly causes people to gamble. Nor did it submit any evidence to show that a ban limited to broadcast advertising of non-Indian casino gaming, while leaving untouched numerous other forms of gambling advertising (including broadcast advertising for Indian casinos), could materially reduce gambling. Instead, both the Government and the court of appeals relied on mistaken, and, in any event, inadequate presumptions about the effects of advertising. *See Glickman*, 117 S. Ct. at 2153 (Souter, J., dissenting) (noting that "the

unremarkable presumption that advertising actually works to increase consumer demand" is not "automatically convertible" into support for the more tenuous connection between the elimination of *some* advertising and a reduction in demand).

Moreover, the numerous exceptions to section 1304's broadcast advertising ban – for gambling activities ranging from lotteries run by 37 States to Indian casino gaming in at least 22 States – make it impossible for the Government to prove that section 1304 materially reduces gambling. Dispositive here is this Court's decision in *Rubin*, 514 U.S. 488-89, which invalidated the Government's prohibition on the disclosure of alcohol content on beer labels, as "irrational" because the Government inconsistently permitted the disclosure of alcohol content both on labels of distilled spirits and in advertising for beer or distilled spirits. *See Valley Broadcasting*, 107 F.3d at 1334-35; *Players Int'l*, 988 F. Supp. at 506 n.5.

Third, the Government cannot show that it has used the "least restrictive means" to advance its goal, or, to put the requirement in *Central Hudson* terms, that it has carefully considered obvious, less burdensome alternatives to censorship. *See 44 Liquormart*, 517 U.S. at 506-08 (Stevens, J.); *id.* at 524-26 (Thomas, J., concurring); *id.* at 528-31 (O'Connor, J., concurring). Here, plaintiffs identified 16 non-speech-related alternatives for reducing gambling, and the Government submitted absolutely no evidence to show why it had rejected those alternatives. For this additional reason, section 1304 should be struck down as an impermissible restriction on speech. *See Players Int'l*, 988 F. Supp. at 505-07.

The court of appeals disregarded its constitutional duty in this case. It failed to require the Government to justify with evidence its ban on protected speech. Based on the provocative opinion of the majority, it is clear that the court of appeals refused to acknowledge that *Central Hudson* has evolved into a test much closer to strict scrutiny than to rational basis review. Such impermissibly deferential decisions will recur far too regularly, we fear, until this Court explicitly adopts strict scrutiny as the test for protecting truthful, nonmisleading commercial speech.

CONCLUSION

The decision of the court of appeals should be reversed.

Respectfully submitted,

Of Counsel

GILBERT H. WEIL
60 East 42nd Street
New York, NY 10168
(212) 687-8573

JOHN J. WALSH*
STEVEN G. BRODY
CADWALADER, WICKERSHAM & TAFT
100 Maiden Lane
New York, NY 10038
Telephone: (212) 504-6000

Attorneys for Amicus Curiae Association of National Advertisers, Inc.

**Counsel of Record*

3. New ſtates may be admitted by the Congreſs into this union; but no new ſtate ſhall be formed or erected within the juriſdiction of any other ſtate; nor any ſtate be formed by the junction of two or more ſtates, or parts of ſtates, without the conſent of the legiſlatures of the ſtates concerned, as well as of the Congreſs.

The Congreſs ſhall have power to diſpoſe of and make all needful rules and regulations reſpecting the territory or other property belonging to the United States; and nothing in this conſtitution ſhall be ſo conſtrued as to prejudice any claims of the United States, or of any particular ſtate.

Sect. 4. The United States ſhall guarantee to every ſtate in this union, a republican form of government, and ſhall protect each of them againſt invaſion; and on application of the legiſlature, or of the executive when the legiſlature cannot be convened, againſt domeſtic violence.

ARTICLE V.

The Congreſs, whenever two-thirds of both houſes ſhall deem it neceſſary, ſhall propoſe amendments to this conſtitution, or, on the application of the legiſlatures of two-thirds of the ſeveral ſtates, ſhall call a convention for propoſing amendments, which, in either caſe, ſhall be valid to all intents and purpoſes, as part of this conſtitution, when ratified by the legiſlatures of three-fourths of the ſeveral ſtates, or by conventions of three-fourths thereof, as the one or the other mode of ratification may be propoſed by the Congreſs; Provided, that no amendment which may be made prior to the year one thouſand ſeven hundred and eight, ſhall in any manner affect the firſt and fourth clauſes in the ninth ſection of the firſt article; and that no ſtate, without its conſent, ſhall be deprived of its equal ſuffrage in the ſenate.

ARTICLE VI.

All debts contracted, and engagements entered into, before the adoption of this conſtitution, ſhall be as valid againſt the United States under this conſtitution, as under the confederation.

This conſtitution, and the laws of the United States, which ſhall be made in purſuance thereof; and all treaties made, or which ſhall be made, under the authority of the United States, ſhall be the ſupreme law of the land; and the judges, in every ſtate, ſhall be bound thereby, any thing in the conſtitution, or laws of any ſtate, to the contrary notwithſtanding.

The ſenators and repreſentatives before-mentioned, and the members of the ſeveral ſtate legiſlatures, and all executive and judicial officers, both of the United States, and of the ſeveral ſtates, ſhall be bound, by oath or affirmation, to ſupport this conſtitution; but no religious teſt ſhall ever be required as a qualification to any office, or public truſt, under the United States.

ARTICLE VII.

The ratification of the conventions of nine ſtates ſhall be ſufficient for the eſtabliſhment of this conſtitution between the ſtates ſo ratifying the ſame.

Done in Convention, by the unanimous conſent of the States preſent, the ſeventeenth day of September, in the year of our Lord one thouſand ſeven hundred and eighty-ſeven, and of the Independence of the United States of America the twelfth. In witneſs whereof we have hereunto ſubſcribed our Names.

GEORGE WASHINGTON, *Preſident,*
And Deputy from VIRGINIA.

NEW-HAMPSHIRE.	John Langdon, Nicholas Gilman.
MASSACHUSETTS.	Nathaniel Gorham, Rufus King.
CONNECTICUT.	William S Johnſon, Roger Sherman.
NEW-YORK.	Alexander Hamilton.
NEW-JERSEY.	William Livingſton, David Brearly, William Paterſon, Jonathan Dayton.
PENNSYLVANIA.	Benjamin Franklin, Thomas Mifflin, Robert Morris, George Clymer, Thomas Fitzſimons, Jared Ingerſoll, James Wilſon, Gouverneur Morris.
DELAWARE.	George Read, Gunning Bedford, jun. John Dickinſon, Richard Baſſett, Jacob Broom.
MARYLAND.	James M'Henry, Daniel of St. Thomas Jenifer, Daniel Carrol.
VIRGINIA.	John Blair, James Madiſon, jun.
NORTH-CAROLINA	William Blount, Richard Dobbs Spaight, Hugh Williamſon.
SOUTH-CAROLINA.	John Rutledge, Charles C. Pinckney, Charles Pinckney, Pierce Butler.
GEORGIA.	William Few, Abraham Baldwin.

Atteſt. WILLIAM JACKSON, *Secretary.*

In CONVENTION, Monday, *Sept.* 17, 1787.

PRESENT,

The States of New Hampſhire, Maſſachuſetts, Connecticut, Mr. *Hamilton* from New-York, New-Jerſey, Pennſylvania, Delaware, Maryland, Virginia, North-Carolina, South-Carolina, and Georgia:

RESOLVED,

THAT the preceding Conſtitution be laid before the United States in Congreſs aſſembled, and that it is the opinion of this Convention, that it ſhould afterwards be ſubmitted to a Convention of Delegates, choſen in each ſtate by the people thereof, under the recommendation of its legiſlature, for their aſſent and ratification; and that each Convention aſſenting to, and ratifying the ſame, ſhould give notice thereof to the United States in Congreſs aſſembled.

Reſolved, That it is the opinion of this Convention, that as ſoon as the Conventions of nine ſtates ſhall have ratified this conſtitution, the United States in Congreſs aſſembled, ſhould fix a day on which electors ſhould be appointed by the ſtates which ſhall have ratified the ſame, and the day on which the electors ſhould aſſemble to vote for the preſident, and the time and place for commencing proceedings under this conſtitution. That after ſuch publication, the electors ſhould be appointed and the ſenators and repreſentatives elected; that the electors ſhould meet on the day fixed for the election of the preſident, and ſhould tranſmit their votes, certified, ſigned, ſealed, and directed, as the conſtitution requires, to the ſecretary of the United States, in Congreſs aſſembled, that the ſenators and repreſentatives ſhould convene at the time and place aſſigned; that the ſenators ſhould appoint a preſident of the ſenate, for the ſole purpoſe of receiving, opening and counting the votes for preſident; and, that after he ſhall be choſen, the Congreſs, together with the preſident, ſhould, without delay, proceed to execute this conſtitution.

By the unanimous Order of the Convention,
GEORGE WASHINGTON, Preſident.
William Jackſon, Secretary.

New-York, Sept. 27.

ON Monday laſt the Britiſh packet, Halifax, Captain Houldſworth, arrived, with the mail, in 46 days from Falmouth; by whom we have received London papers to the 3d of Auguſt.

Theſe papers inform,——That an extraordinary council met, in London, on the 28th July, to deliberate on the laſt accounts reſpecting the Dutch affairs.——The determination, in ſubſtance, is to this effect; that the popular encroachments on the powers and privileges of the ſtadtholder ſhould be repelled, and the prince of Orange ſhould be maintained in the full enjoyment of every conſtitutional right. In conſequence of this determination, diſpatches were immediately prepared to go with Mr. Eden to the French court, and with Mr. Grenville to Holland.——That all the reports, reſpecting the march of SIXTY THOUSAND Pruſſian troops, is without foundation.——That the Flemiſh accounts, of 60,000 of the emperor's troops being on their march from Germany to the Auſtrian low countries, is, alſo, in every reſpect premature: on the contrary, it is ſaid, deputies are ſent out for Vienna, where there is not a doubt, but the buſineſs will be ſettled equally to the honor of the ſovereign, and the benefit of the inhabitants of Auſtrian Flanders.——That Tippoo Saib, in the eaſt, has gained a decided advantage over the Marhattas; ſince this, overtures have been made for peace with the conquered.——That the Britiſh Parliament was prorogued, on the 31ſt July, to meet on the 23th Oct.——That the Rev. Charles Inglis, D. D. is appointed biſhop of Nova-Scotia.——That a ſhock of an earth-quake was felt, in ſeveral parts of England, on the 6th July.——That more lives have been loſt, and more miſchief done to perſonal property, in England, by late thunder ſtorms, than for many years paſt.——And that a ſubſcription is ſet on foot in the city of London, for the relief of the ſufferers by the late fire in Boſton; on the 31ſt of July ONE HUNDRED and FOURTEEN GUINEAS had been paid into the hands of Sir James Eſdaile, and Co. Bankers, for the above benevolent purpoſe. Subſcriptions were going on rapidly at ſeveral other principal Banking-houſes in that city. It is ſaid that this charitable act originated among the ſociety of Friends (Quakers) and was followed by all denominations of people. It is thought, that by Chriſtmas ſeveral thouſand pounds will be received. Meſſrs. Champion and Dickenſon, merchants, have ſubſcribed Twenty-five guineas.

A letter from Paris, dated July 20, ſays:—"We are aſſured that a Congreſs will be held at Verſailles, conſiſting of the ambaſſadors extraordinary of all the *powers* in Europe, and their important buſineſs is ſaid to be the concluding, and ſigning, a treaty of peace under the general and particular guarantee of all the powers, which is to be inviolably kept up for 30 years. Our Miniſter of foreign affairs has already, it is ſaid, got the conſent of all the republics, and eight crowned heads. If this plan ſucceeds, it will do great honor to the projector of it.

AUTHENTIC *London paragraph!* from the New Daily Advertiſer of Auguſt 18, ſays:—— By the laſt accounts from Philadelphia we find, that there has been a moſt violent party debate in the Convention, about who ſhould be appointed preſident. The northern ſtates propoſed Dr. Franklin, and the ſouthern Gen. Waſhinton, which was carried by one vote in favour of the latter.

On the 21ſt ultimo a reſolve took place in Congreſs, authoriſing the ſuperintendant of Indian affairs, in the northern department, to proceed to Poſt St. Vincents, and there hold a treaty with the Wabaſh, Shawaneſe, and other hoſtile tribes of Indians; hear their complaints; and inform them of the pacific inclination of Congreſs. To inform the Hurons, &c. who joined the repreſentation made to Congreſs, that their repreſentation is received, and will be conſidered in due time.—That the ſecretary at war, by federal troops, effectually protect the frontiers of Pennſylvania, and Virginia, and the federal lands, from Indian intruſions, to promote a favourable iſſue to the intended treaty.—Requeſting that the militia of Virginia, and Kentuckey, hold themſelves in readineſs, to co-operate in the defence of the frontiers, ſhould neceſſity require it, &c. &c.

We learn, that a duel was fought, on Tueſday evening laſt, between Capt. Verdure (a French gentleman, late officer in Count Polaſki's Legion) and Monſieur Chevalier de Longchamps, in which the latter unfortunately fell a victim. It is ſaid, that the conteſt was the reſult of a former diſpute.

A remarkable phœnomenon, which lately appeared in the atmoſphere, at the eaſtward of Boſton, has excited curioſity in ſome, the palpitation of heart in others; and a third claſs have minuted it in their memorandums, as a fore-runner of ſome diſaſterous event. Reports from the phœnomenon, of different kinds, were heard at great diſtances, and the old women of the country, with horror in their looks, declare, that they diſtinctly heard the reports of cannon, muſquetry, fifes drums, and the claſhing of arms.

On Friday night, another daring attempt was made to conſume, by fire, the ſtores in Gouverneur's alley, in order, as it is ſuppoſed, to communicate fire to a large part of the city. It appears by this, that the incendiaries, upon the leaſt relaxation of the patroles, will effect their villainous purpoſe.

The ſhip Juno, Oliver, is arrived in the Britiſh Channel.

☞ *A few Copies of the* FŒDERAL CONSTITUTION *to be had of the Printer hereof.*

The repeated attacks of public foes, foreign correſpondents, and the variety of lures, which have been paſted in different ſtreets countenancing the violation of private engagements, have had an ill effect influence on our national morals, as on our national character. Honeſt men muſt rejoice to ſee a ſpirit of honeſty ſtunning through the NEW CONSTITUTION.—Public ſpirited men muſt rejoice to ſee a proſpect of our national reputation being reſcued from approbrium and diſgrace; and all good men, not blinded by party ſpirit, muſt rejoice to ſee an effort to erect barriers againſt the eſtabliſhment of iniquity by law. The Convention have at leaſt given a diſtinguiſhed proof of their attachment to the principles of probity and rectitude.

Accounts from Worceſter, ſay,——In conſequence of the pardon, lately granted by the executive department of government to thoſe who were under ſentence of death for being concerned in the late rebellion, Henry Gale was releaſed from his impriſonment.

We learn from Philadelphia, that the inhabitants of the diſtricts of Southwark, and the north liberties of that city, aſſembled, have already petitioned the houſe of aſſembly, now ſitting, that the Federal Conſtitution may be adopted as ſpeedily as poſſible by that ſtate.

The firſt public examination was held in ERASMUS HALL, at Flatbuſh, laſt Thurſday; when his Excellency the Governor, with a committee of the honorable Regency of the Univerſity, together with the Truſtees of the Hall and a number of other gentlemen from New-York, attended.—The proficiency of the ſcholars, and particularly the ſpecimens in eloquence, afforded great ſatisfaction.

On Friday laſt arrived here his moſt Chriſtian Majeſty's packet, No. 2, Capt. Couridout, in 36 days, from Havre-de Grace.

Capt. Tinker, in his paſſage from Charleſton to this port, in 39. 30. N. ſaw a ſloop upſet, with a red bottom, white ſtern, yellow ſides, and black wail, burthen between 60 and 70 tons, no perſon on board.

Arrived, at Charleſton, the ſhip Friendſhip, Captain Cauſer, from Larne, with about 200 paſſengers.

The ſhip Nancy, Hall, is arrived at Charleſton (South-Carolina) from London.

MARRIED, On Wedneſday evening, by the Rev. Benj. Moore, Mr. NICHOLAS BREVORT, merchant, to Miſs RACHAEL BLAU, both of this city.

——At Aquaſnock, laſt Thurſday evening, DAVID BROOKS, Eſq. a member of the hon. legiſlature of this ſtate, to Miſs MARIA MALLAM NEIL, ſtep-daughter of Col. Samuel Hay, of Aquaſnock.

——On Friday evening laſt, by the Rev. Mr. Kuntze, Mr. EDWARD PALMER, to Miſs PEGGY BRASHER, both of this city.

Laſt Sunday morning, after a lingering illneſs, which ſhe bore with the moſt exemplary fortitude, departed this life, in the 51ſt year of her age; Mrs. DEBORAH FRANKLIN, the truly amiable conſort of Mr. JOHN FRANKLIN, merchant of this city, and eldeſt daughter of the late ANTHONY MORRIS, Eſq. of Philadelphia. Her remains were, on Tueſday evening, attended by a very numerous and reſpectable concourſe of citizens, of almoſt every denomination, to the Friends Burying-Ground, where they were interred agreeable to the order of the ſociety.

This benevolent lady had, prior to the year 1780, long been ſubject to thoſe acute arthritic complaints, which frequently ſubdue the moſt robuſt, but which ſhe bore with a truly Chriſtian patience. On the 21ſt of November, 1780, the Britiſh commandant, of this city, no longer able to hear of, or bear, the daily accounts of her contributing, with unbounded liberality, to the relief of her fellow-citizens, who were priſoners of war, baniſhed her, without any regard to her ſituation or ſex, or the inclemency of the ſeaſon, from this city, by which act of cruelty ſhe became deprived of the uſe of her feet. But neither the threats, power, nor cruelty of Britons could change her ſentiments relative to the juſtice of her country's cauſe, nor deter her from exerciſing her humanity towards thoſe whom the fortune of war brought within the reach of her relief.—Nor was her benevolence confined merely to thoſe unhappy objects, but extended to all thoſe, without diſtinction, with whoſe diſtreſſes ſhe was acquainted.

As ſhe lived greatly beloved, ſhe died much lamented by thoſe who wiſh to imitate her virtues, and has left a huſband, and ſeven children, to deplore their irretrievable loſs.

☞ *A number of* ADVERTISEMENTS, PIECES, *and* PARAGRAPHS, *are omitted, this week, to give place to the* FŒDERAL CONSTITUTION.—*It is preſumed, that the cauſe of theſe omiſſions will operate as a ſufficient apology to all intereſted therein.*

For the NEW-YORK JOURNAL.

To the CITIZENS *of the* STATE *of* NEW-YORK,

THE Convention, who ſat at Philadelphia, have at laſt delivered to Congreſs that ſyſtem of general government, which they have declared beſt calculated to promote your ſafety and happineſs as citizens of the United States. This ſyſtem, though not handed to you formally by the authority of government, has obtained an introduction through divers channels; and the minds of you all, to whoſe obſervation it has come, have no doubt been contemplating it; and alternate joy, hope, or fear have preponderated, as it conformed to, or differed from, your various ideas of juſt government.

Government, to an American, is the ſcience of his political ſafety——this then is a moment to you the moſt important—and that in various points—to your reputation as members of a great nation—to your immediate ſafety, and to that of your poſterity. In your private concerns and affairs of life you deliberate with caution, and act with prudence; your public concerns require a caution and prudence, in a ratio, ſuited to the difference and dignity of the ſubject. The diſpoſal of your reputation, and of your lives and property, is more momentous than a contract for a farm, or the ſale of a bale of goods; in the former, if you are negligent or inattentive, the ambitious and deſpotic will entrap you in their toils, and bind you with the cord of power from which you, and your poſterity, may never be freed; and if the poſſibility ſhould exiſt, it carries along with it conſequences that will make your community loſer in its center: in the latter, it is a mere loſs of a little property, which more circumſpection, or aſſiduity, may repair.

Without raſhly eſpouſing or vehemently oppoſing the new form of national government, or of an oppoſite—let me compare you to conſiders it as a very important crisis of your ſafety and conſequence. You have already, in common with the reſt of your countrymen, the citizens of the other ſtates, given to the world ſtriking evidences of your greatneſs—you have fought under peculiar circumſtances, and were ſucceſsful againſt a powerful nation on a ſpeculative queſtion—you have eſtabliſhed an original compact between you and your governors, a fact heretofore unknown in the formation of the governments of the world—your experience has informed you, that there are defects in the federal ſyſtem, and, to the aſtoniſhment of mankind, your legiſlatures have concerted meaſures for an alteration, with as much eaſe as an individual would make a diſpoſition of his ordinary domeſtic affairs: this alteration now lies before you, for your conſideration; but beware how you determine—do not, becauſe you adviſe that ſomething muſt be done, adopt any thing—watch the members of that convention, that you are capable of a ſupervision of their conduct. The ſame medium that gave you this ſyſtem, if it is erroneous, while the door is now open, can make amendments, or give you another, if it is required.—Your fate, and that of your poſterity, depends on your preſent conduct—do not give the latter reaſon to curſe you, nor yourſelves cauſe of reproach from ſurrounding individuals you are ambitious of leaving behind you a good name, and it is the reflection, that you have done right in this life, that blunts the ſharpneſs of death; the ſame principles would be a conſolation to you, as patriots, in the hour of diſſolution, that you would leave to your children a fair political inheritance, untouched by the vultures of power, which you have acquired by an unſhaken perſeverance in the cauſe of liberty—but how miſerable the alternative—you would deprecate the ruin you had brought on yourſelves—be the curſe of poſterity, and the ſcorn and ſcoff of nations.

Deliberate, therefore, on this new national government with coolneſs; analize it with criticiſm; and reflect on it with candour: if you find that the influence of a powerful few, or the exerciſe of a ſtanding army, will always be directed and exerted for your welfare alone, and not to the aggrandizement of themſelves, and that it will ſecure to you and your poſterity happineſs at home, and national dignity and reſpect from abroad, adopt it—if it will not, reject it with indignation—better to be where you are, for the preſent, than inſecure forever afterwards. Turn your eyes to the United Netherlands, at this moment, and view their ſituation; compare it with what yours may be, under a government ſubſtantially ſimilar to theirs.

Beware of thoſe who wiſh to influence your paſſions, and to make you dupes to their reſentments and little intereſts—perſonal intereſtives can never perſuade, but they always ſ prejudices which candor might have removed—thoſe who deal in them have not your happineſs at heart. Attach yourſelves to meaſures, not to men.

This form of government is handed to you by the recommendations of a man who merits the confidence of the public; but you ought to recollect, that the wiſeſt and beſt of men may err, and their errors, if adopted, may be fatal to the community; therefore, in principles of *politics*, as well as in religious faith, every man ought to think for himſelf.

Hereafter, when it will be neceſſary, I ſhall make ſuch obſervations, on this new conſtitution, as will tend to promote your welfare, and be juſtified by reaſon and truth. CATO.

Sept. 26, 1787.

TUESDAY, APRIL 8, 1788. THE VOLUME VII. NUMBER 724.

INDEPENDENT GAZETTEER;
OR, THE
CHRONICLE OF FREEDOM.

must the People have a Right to Freedom of Speech, and of writing, and publishing their Sentiments; therefore the Freedom of the Press ought not to be restrained.—Pennsylvania Bill of Rights.

Let it be impressed upon your Minds, let it be instilled into your Children, that the Liberty of the Press is the PALLADIUM *of all the civil, political, and religious Rights of* Freemen.—Junius.

From the MARYLAND JOURNAL.

NUMBER I.

To the CITIZENS *of* MARYLAND.

TO you, my fellow citizens, I hold myſelf in a particular manner accountable for every part of my conduct in the exerciſe of a truſt repoſed in me by you, and ſhould conſider myſelf highly culpable if I was to withhold from you any information in my poſſeſſion, the knowledge of which may be material to enable you to form a right judgment on queſtions wherein the happineſs of yourſelves and your poſterity are involved—Nor ſhall I ever conſider it an act of condeſcenſion when impeached in my *public* conduct, or character, to vindicate myſelf at your bar, and to ſubmit myſelf to your deciſion. In conformity to theſe ſentiments, which have regulated my conduct ſince my return from the Convention, and which will be the rule of my actions in the ſequel, I ſhall, at this time, beg your indulgence, while I make ſome obſervations on a Publication which the Landholder has done me the honor to addreſs to me, in the Maryland Journal, of the 29th of February laſt.

In my controverſy with that writer, on the ſubject of Mr. Gerry, I have already enabled you to decide, without difficulty, on the credit which ought to be given to his moſt poſitive aſſertions, and ſhould ſcarce think it worth my time to notice his charges againſt myſelf, was it not for the opportunity it affords me of ſtating certain facts and tranſactions, of which you ought to be informed, ſome of which were *undeſignedly* omitted by me when I had the honor of being called before the Houſe of Delegates.

No "extreme modeſty" on my part was requiſite to induce me to conceal the "ſacrifice of reſentments" againſt Mr. Gerry—ſince no ſuch ſacrifice had ever been made—nor had any ſuch reſentments ever exiſted—The *principal* oppoſition in ſentiment between Mr. Gerry and myſelf, was on the ſubject of repreſentation; but even on that ſubject, he was much more conceding than his colleagues, two of whom obſtinately perſiſted in voting againſt the equality of repreſentation in the Senate, when the queſtion was taken in Convention upon the adoption of the conciliatory propoſitions, on the fate of which depended, I believe, the *continuance* of the Convention.

In many important queſtions we perfectly harmonized in opinion, and where we differed, it never was attended with warmth or animoſity, nor did it in any reſpect interfere with a friendly intercourſe, and interchange of attention and civilities.—We both oppoſed the extraordinary power over the militia, given to the general government—we were both againſt the re-eligibility of the preſident—we both concurred in the attempt to prevent members of each branch of the legiſlature from being appointable to offices, and in many other inſtances, although the Landholder, with his uſual regard to truth, and his uſual *impoſing* effrontery, tells me, that I "doubtleſs muſt remember Mr. Gerry and myſelf never voted alike, except in the inſtances" he has mentioned. As little foundation is there in his aſſertion, that I "cautioned certain members to be on their guard againſt his wiles, for that he and Mr. Maſon held private meetings, where the plans were concerted to aggrandiſe, at the expence of the ſmall ſtates, old Maſſachuſetts and the ancient dominion." I need only ſtate facts to refute the aſſertion. Some time in the month of Auguſt, a number of members who conſidered the ſyſtem, as then under conſideration, and likely to be adopted, extremely exceptionable, and of a tendency to deſtroy the rights and liberties of the United States, thought it adviſable to meet together in the evenings, in order to have a communication of ſentiments, and to concert a plan of *conventional* oppoſition to, and amendment of that ſyſtem, ſo as, if poſſible, to render it leſs dangerous. Mr. Gerry was the firſt who propoſed this meaſure to me, and that before any meeting had taken place, and wiſhed we might aſſemble at my lodgings; but not having a room convenient, we fixed upon another place---There Mr. Gerry and Mr. Maſon *did* hold meetings; but with them alſo met the Delegates from New-Jerſey and Connecticut, a part of the delegation from Delaware, an honorable member from South-Carolina, one other from Georgia, and myſelf——Theſe were the only 'private meetings' that ever I knew or heard to be held by Mr. Gerry and Mr. Maſon---meetings at which I myſelf attended until I left the Convention---and of which the ſole object was not to aggrandize the *great* at the expence of the *ſmall*, but to protect and preſerve, if poſſible, the exiſtence and eſſential

THE
BOSTON
AND
COUNTRY
GAZETTE,
THE
JOURNAL.

[No. 1770.]

Containing the lateſt Occurrences,

Foreign and Domeſtic.

MONDAY,

June 30, 1788.

Printed by BENJAMIN EDES and SON, No. 7, State-Street, BOSTON.

A FREE PRESS MAINTAINS THE MAJESTY OF THE PEOPLE.

NOTICE.

WHEREAS HECTOR LITHGOW, who, in or about the Year 1764, ſerved as a Private in his Majeſty's 77th Regt. then quartered at *Halifax*, in Nova-Scotia left that Place for Great Britain; and proceeded in the ſame Capacity to the Eaſt Indies, where he died in the Year 1784, poſſeſſed of conſiderable Property, and by his laſt Will and Teſtament deviſed the ſame to JOHN and HUGH LITHGOW, his two Sons, who were born in the ſaid Town of Halifax, and lately reſided there, and alſo to FRANCES SWEETING, their Mother: This is therefore to notify the ſaid JOHN and HUGH LITHGOW and FRANCES SWEETING, or any of them, that ſatisfactory information of the whole Tranſaction may be received at Halifax, by applying to Meſſrs. BAYNES and BELCHER; at New York, to THOMAS POPE, Eſq.

N. B. Any who may have it in their Power to give ſatisfactory Information with Reſpect to the above Perſons, or any one of them, ſhall be rewarded for their trouble.

☞ The Printers in the Weſt India Iſlands and the States of America, are deſired to inſert the above Advertiſement; and the charge of the ſame will be diſcharged by tranſmitting their Accounts to either of the above Gentlemen.

Halifax, April 10, 1788.

TO BE SOLD

By Public Vendue, by Order of the SUPREME JUDICIAL COURT,

THAT valuable Wharf, Dock, and Flats, belonging to the ſame, ſituate on Fiſh-Street, at the bottom of Croſs Street; known by the name of PULLING's WHARF, with the Ware Houſes or Stores thereon; reſerving liberty to take off a Copper's Shop, built by Capt. Lemuel Gardner the preſent Occupant. The Wharf and Stores may be viewed at any time before the Sale, which will be on the Premiſes, on Thurſday the 10th Day of July next, at 12 o'Clock,

Apply to SARAH PULLING, Executrix.
EDWARD PROCTER, Auctioneer.
(c. t. l.)

BOSTON, April 14, 1788.

WHEREAS ſome Perſon or Perſons have acted ſo villainous a Part as to make Uſe of my Name in vending and ſelling SNUFF of a very bad Quality; not only injuring me in my Credit, but cheating the Purchaſer, as the SNUFF manufactured by me is of the beſt Kind, and which I always WARRANT to be ſuch.

SOME of the Purchaſers of ſaid BAD SNUFF, have brought the ſame to me, ſuppoſing it to be REALLY of my Manufacture—but upon Examination, found it to be of a looſe and dry Kind, and may be eaſily diſcovered.

WHOEVER will give Information of the Perſon or Perſons, that thus impoſe upon the Publick, by making uſe of my Name to Vend and Sell ſuch BASE Snuff, ſhall be handſomely rewarded.

By their humble Servant,

Simon Elliot.

☞ The Publick are informed, that to prevent the above deception, the Advertiſements on Bladders of Snuff, in future, will be altered from Letter-preſs, to a Copperplate Impreſſion.

SUFFOLK, ſs. ALL Perſons claiming Property in three Cheſts of Bohea Tea, and Fifty-eight Loaves of White Sugar, ſeized by *James Lovell*, Eſq; Collector of Impoſt and Exciſe for ſaid County, for illegal Importation—are hereby notified to appear at the Court of Common Pleas to be held at *Boſton*, on the Firſt Tueſday of *July* next, and ſhew Cauſe (if any they have) why the ſame Tea and Sugar ſhould not be adjudged Forfeit.

EZEKIEL PRICE, *Clerk.*

WHEREAS, Elizabeth, the Wife of the Subſcriber, has behaved herſelf in an unbecoming manner—Theſe are therefore to forbid all Perſons from truſting her on my account, as I will not pay one farthing ſhe may contract after the above date.

JOHN LAURENCE.

BOSTON, June 20, 1788.

IMPORTED in the laſt Veſſels from LONDON,
AND TO BE SOLD,

By JAMES WHITE,

At FRANKLIN's HEAD, COURT STREET,
A general Aſſortment of BOOKS and STATIONARY,
By Wholeſale and Retail, viz.

LARGE and ſmall BIBLES, Engliſh, French, and Latin DICTIONARIES, Grammars, School Books, Seamen's Books, Book Keeping, Arithmetic, Geography, ſmall Hiſtories, Teſtaments, Pſalm Books, Spelling Books and Primmers, Account Books, and Record Books of all ſizes, Ink Powder, Ink Cake, Wax, Wafers, Copy Slips, Writing Books, &c.

ALSO,

A Large Aſſortment of Superfine, Middling and Common

Writing Paper,

Of all ſizes, qualities and Prices, Thick, Thin, and Extra Thin Letter Paper, Plain and Gilt, Dutch Quills, from 2/8 to 5/ per hundred, &c.

Every Article will be ſold on as good terms as at any Store or Shop in BOSTON, and great allowance to thoſe who purchaſe by the quantity.

BOSTON, May 21, 1788.

Jonathan Haſtings,

INFORMS the Public, and particularly his Cuſtomers, That he has removed his SHOP and the POST-OFFICE, from No. 35 to No. 41, Cornhill, next Door to where the Poſt Office was kept before the late War;

WHERE HE HAS FOR SALE,

A general Aſſortment of STATIONARY, and fifth Single, Souchong, Common, Green and Hyſon TEAS.

Suffolk ſs. ALL Perſons claiming Property in Three Barrels of Sugar, and One Quarter Caſk of Wine, ſeized by THOMAS MELVILLE, Eſq. Naval-Officer for the port of Boſton, for Breach of the Laws of this State, are hereby Notified to appear, and ſhew cauſe (if any they have) at a Court of Common Pleas, to be held at Boſton, on the firſt Tueſday of July next, why the ſame Sugar and Wine ſhould not be adjudged forfeit. By Order

EZEKIEL PRICE, Clerk.

THE Members of the SOCIETY of the CINCINNATI of this Commonwealth are hereby notified, that their annual meeting will be held at the Bunch of Grapes Tavern in Boſton, on the Fourth of July next, at ten o'clock A. M.

An Oration will be delivered in the forenoon by General HULL; and thoſe Members who have not received their Diplomas, can obtain them from the Treaſurer the evening preceding the fourth.

N. B. Dinner at three o'clock.

W. EUSTIS, Vice-Preſident.

☞ The Printers of the ſeveral papers in this Commonwealth, will inſert the above.

Boſton, May 17, 1788.

TAKEN up aſtray in Dedham, on the 10th of April laſt, a ſmall Red COW, judg'd to be about 8 years old, part of the Bag and Tail White. Whoever has loſt the ſame, by applying to Mr. Thomas How, 3d. of Dedham, and proving their Property, ſhall have her again, paying Charges.

[From the New Hampſhire Gazette, of May 29.]

THE public are cautioned to beware of counterfeit Certificates, done in imitation of thoſe iſſued for intereſt and fifteen per cent. of the principal on Notes of this State, dated July 31ſt, 1787. The whole impreſſion is pale when compared with thoſe that are genuine and the letters in the Counterfeits, are ſmaller.—The N° in the beginning of the Certificate in the true ones, the o is near the top of the N. thus N°. in the Counterfeits the o is at the bottom thus N°. The top of the J in the beginning of the Certificates in thoſe that are genuine is above the I in the counterfeit, rather lower. There are ſeveral other marks, but thoſe mentioned may be ſufficient to detect them.

EXETER, May 22, 1788.

. The ſeveral Printers in the United States are requeſted to inſert the above in their News Papers.

By the UNITED STATES in CONGRESS aſſembled, May 8th, 1788.

ON a report of the Board of Treaſury, to whom was referred a motion of Mr. Carrington,

RESOLVED, That Congreſs proceed to the election of two Commiſſioners for ſettling the accounts of the five great departments, to continue in office one year.

ORDERED, That the Commiſſioners of Accounts for the quartermaſter's, commiſſary's, hoſpital, marine and cloathing departments, with the approbation of the Board of Treaſury, commence ſuits in behalf of the United States, againſt all perſons in any of the ſaid departments, who ſtand chargeable with public monies, and whoſe accounts ſhall not be lodged with the proper Commiſſioners within four months, computed from the preſent date; and that this order be publiſhed in the ſeveral ſtates for the period above mentioned.

RESOLVED, That the ſaid Commiſſioners be directed to continue their unremitted attention to the final adjuſtment of all accounts which have ariſen in the ſaid departments, and to the recovery of all ſums for which ſuits may be commenced; and that at the termination of their commiſſion, they depoſit with the Regiſter of the Treaſury all the books and papers of their reſpective offices, together with a general abſtract of the ſums due from individuals, in order that immediate meaſures may be adopted for the recovery of the ſame.

Congreſs proceeded to the election, and the ballots being taken,

Mr. JONATHAN BURRALL was elected a Commiſſioner for ſettling the accounts of the quartermaſter's and commiſſary's departments, and

Mr. BENJAMIN WALKER was elected Commiſſioner for ſettling the accounts of the hoſpital, marine, and cloathier's departments.

CHARLES THOMPSON, Secretary.

On the National Conſtitution.

SHOULD the citizens of America ratify the proceedings of the Convention, the happy event will form an epocha more peculiar in its nature, more felicitating in its conſequence, and more intereſting to the philoſophic mind, than ever the political hiſtory of man has diſplayed. Where is the country in which the principles of civil liberty and juriſprudence are ſo well underſtood as in this; and where has ever ſuch an aſſembly of men been deputed for ſuch a purpoſe? To ſee an aſſemblage of characters, moſt of them illuſtrious for their integrity, patriotiſm and abilities repreſenting many ſovereign States; framing a ſyſtem of government for the whole, in the midſt of profound peace; unembarraſſed by any unfavourable circumſtances abroad, unbiaſſed by any ſelfiſh motives at home; but making the moſt generous conceſſions to each other for the common welfare, and directing their deliberation with the moſt perfect unanimity; To ſee a conſtitution of government thus formed, and fraught with wiſdom, œconomy and foreſight, adapted to the political habits of their conſtituents, to the ſtate of ſociety and civilization, to the peculiar circumſtances of their country, and to thoſe enlightened ſentiments of freedom and toleration, ſo dear to all poſſeſſion: And, finally, to ſee this conſtitution ratified and adopted by ſeveral millions of people, inhabiting an extenſive country, not from any coertion, but from mere principles of propriety, wiſdom and policy: Theſe are objects too great and too glorious to be viewed with common admiration and delight: The idea alone is animating to every boſom ſuſceptible of the emotion of patriotiſm or philanthrophy: The attempt alone reflects dignity upon human nature, and the execution ſecures freedom and publick happineſs to remote poſterity.

This great event will diſcloſe the meaning of thoſe many aſtoniſhing providences which gave victory and to the American arms in the juſt ſtruggle for independence. From this it will appear, that theſe were not intended to uſher in, upon this recent theatre of cultivated humanity, the horrors of domeſtic jarring; but to eſtabliſh, upon the ſtrongeſt baſis, union, freedom and tranquility. The prerogative of the great guardian of nations, to educe good from evil, will become illuſtrious. Our reproach abroad, and diſarrangement at home, will but ſhew us in contraſt, the magnitude of our change. The light of proſperity will but ſhine the brighter, as juſt burſting from the diſſipated clouds of injuſtice, avarice and ambition.

Let us then be of one heart and of one mind. Let us ſeize the golden opportunity to ſecure a ſtable government, and to become a reſpectable nation. Let us be open decided and reſolute in a good cauſe. Let us render our ſituation worthy the aſhes of our ſlaughtered brethren, and our own ſufferings. Let us remember our emblem, the twiſted ſerpent, and its emphatical motto, UNITE OR DIE! This was once written in blood; but it is as emphatical now as then. A houſe divided againſt itſelf cannot ſtand. Our national exiſtence depends as much as ever upon our union; and its conſolidation moſt aſſuredly involves our poſterity, felicity and ſafety.
